

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OS AMERICA,)	Civil No.06CR2158 JM
)	
Plaintiff,)	
v.)	ORDER DENYING MOTIONS TO
)	SUPPRESS EVIDENCE AND
LUIS GILARDO PAYAN-VALENZUELA)	STATEMENTS
(1); PEDRO MOYTEZ-PINEDA (2),)	
)	
Defendants.)	
_____)	

Procedural Background

This is a prosecution based on an indictment containing two counts against each Defendant for importation of marijuana and possession of marijuana with intent to distribute.

Pretrial motions brought by Defendants Luis Gilardo Payon-Valenzuela and Pedro Moytez-Pineda to suppress evidence and statements have generated several rounds of evidentiary hearings and filings. On May 10, 2007, U.S. Border Patrol agents Mark Battaglini, Jorge Vega-Torres (Vega), Jesus Salazar, and David Blake testified primarily on their observations and stop of the vehicle in which Defendants were occupants. Their testimony largely concerned Defendants' motion to suppress evidence on the grounds of insufficient legal cause to stop the vehicle and the manner in which the vehicle was stopped. The next evidentiary hearing occurred on June 1, 2007 and focused on the motion to suppress statements. Drug Enforcement Adminis-

1 tration Special Agent Michael Ortiz, who conducted the post-Miranda interviews of the
2 Defendants, testified. The defense called Border Patrol agent (BPA) Jesus Salazar as well as a
3 defense investigator. Yet a third evidentiary hearing was conducted on July 26, 2007. This
4 hearing was occasioned by a declaration filed by BPA Salazar following the second evidentiary
5 hearing of June 1. Because Salazar's declaration was inconsistent with his June 1 testimony on
6 material points, this court ruled it was appropriate to afford Defendants the opportunity to cross-
7 examine Salazar further in lieu of striking his declaration. At the third and final evidentiary
8 hearing, Defendant Moytez-Pineda also testified.

9 ***Factual Background***

10 The Imperial Sand Dunes (Dunes) known by the United State Border Patrol to be a
11 smuggling corridor for illegal aliens and drugs, in the Southern District of California, straddles
12 the United States and Mexico, and is situated approximately nine miles from the Andrade Port of
13 Entry and approximately 35 miles from the Calexico Port of Entry. An area known as Buttercup
14 Valley extends from Mexico on the south in a northward direction across the international
15 border. Buttercup Valley is a relatively flat valley surrounded by the Dunes that rise to
16 approximately 200 feet. Because the topographic severity of the Dunes in the area of the border
17 acts as a natural barrier, there is no man made barrier separating the United States from Mexico.
18 Spaced, concrete monuments in the sand delineate the international boundary. Buttercup Valley
19 extends northward, bordered by tall dunes, ultimately toward the Buttercup campground area.
20 The Buttercup Campground area in turn is accessible to Interstate 8 at a point approximately 15
21 miles west of Yuma, Arizona.

22 Conventional vehicles, including those with four-wheel drive and sport utility vehicles
23 cannot traverse the tall dunes. The only path of travel for such a vehicle traveling from the
24 Mexican Buttercup to the Buttercup campground area on the United States side is through the
25 lower middle dunes into a small trail leading into the Buttercup campground area.

26 On September 20, 2006, a U.S. Border Patrol anti-smuggling unit known as the Smug-
27 gling Target & Action Team (STAT), operating out of the Calexico station of the U.S. Border
28 Patrol, was conducting surveillance of the Buttercup campground and surrounding area for the

1 purpose of detecting smuggling activity. Agent Michael Harrington arrived at approximately
2 8:00 a.m., drove into Buttercup Valley to insure there were no "legitimate vehicles" inside the
3 valley and then exited the valley to assume a point of surveillance at the north end of Buttercup
4 Valley. Agent Harrington maintained constant visual surveillance of the valley and surrounding
5 dunes. When supervising Border Patrol Agent Marc Battaglini assumed Agent Harrington's
6 observation position at approximately 12:30 p.m., Agent Harrington reported that there had been
7 no vehicular traffic at all in the surveillance area that day.

8 Upon assuming his concealed surveillance position, Agent Battaglini observed that there
9 were no vehicles or people present in the Buttercup Valley and the surrounding dunes. After
10 maintaining constant surveillance of the area, however, circumstances changed at approximately
11 4:00 p.m. when Agent Battaglini and other STAT members noticed certain vehicles engaged in
12 "looping" activity between two freeway exits of Interstate 8 "in front of the Buttercup area".
13 Agent Battaglini, based on his substantial enforcement experience in the area, recognized this
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21 Battaglini had, on more than a dozen occasions, observed ATV riders utilized in this manner to
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25 and bore no "flag" as required for off-road vehicles traversing the sand dunes. The Honda SUV
26 thereafter traversed the paved frontage road by Interstate 8 and then entered eastbound Interstate
27 8 at the Gray's Well on-ramp. Prior to September 20, 2006, Agent Battaglini had been involved
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4 Based upon the observations and substantial experience of Agent Battaglini and his
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7 As explained by Agent Battaglini, a CTDD consists of a plastic strip containing small hollow
8 steel tubes. When a vehicle passes over a deployed strip, one or more of the tubes will dislodge
9 from the strip, embed in a tire, and cause air to escape at a controlled rate of deflation. A driver
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11 for some distance. On the approximately 100 prior occasions Agent Battaglini had personally
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14 After allowing for normal freeway traffic to clear and the Honda SUV to pass by points
15 along eastbound I-8 where load vehicles had attempted to elude authorities in the past², the
16 agents deployed a CTDD was deployed to stop the Honda SUV. Once the CTDD was success-
17 fully deployed Agents Blake and Salazar, who had been following the Honda SUV, activated the
18 lights and sirens on their unmarked vehicles and the Honda SUV quickly pulled to the shoulder
19 of the freeway just west of Yuma.

20 Agents Salazar and Blake, respectively, approached the passenger and driver sides of the
21 stopped Honda SUV from the rear and with their service firearms drawn³. When the passenger,
22 Defendant Moytez-Pineda open the passenger door, a strong odor of marijuana was detected by

23 ¹Agent Battaglini did testify that he once observed a vehicle roll over while trying to evade a
24 CTDD.

25 ²The Honda SUV traveled approximately 15 miles on Interstate 8 at the approximate speed of 60
26 mph before it was ultimately stopped.

27 ³Testimony from the several agents established that it was generally understood by all that it was
28 to be a felony stop, with weapons drawn and suspects handcuffed. This procedure had become the
standard method of apprehension of suspected load vehicles emerging from the Buttercup Valley area
under similar circumstances. Testimony of the agents was consistent in that in all such cases the vehicles
stopped were ultimately determined to be marijuana load vehicles.

1 Agent Salazar. As Defendant Moytez-Pineda stepped out of the vehicle, Agent Salazar observed
2 bundles behind the seat which he believed to contain marijuana. Agent Blake noticed a strong
3 odor of marijuana when the driver, Defendant Payan-Valenzuela, opened his door. Both
4 Defendants were placed on the ground and handcuffed. Each Defendant was questioned
5 regarding immigration status without being Mirandized and admitted, in essence, to being a
6 Mexican citizen with no authorization to be in the United States. Defendants were placed under
7 arrest and transported separately in unmarked vehicles to the Calexico-U.S. Border Patrol
8 station.⁴

9 *Advisal of Administrative and Miranda Rights*

10 At the June 1, 2007 evidentiary hearing, Agent Salazar testified he was unable to recall
11 whether he advised Defendants of their administrative removal rights (or whether he used Form
12 I-826 in connection therewith), although he did testify it was his custom and practice to do so
13 when encountering a deportable alien. The relevance of this line of questioning, vigorously
14 pursued by counsel for Defendant Moytez-Pineda, was that if such an administrative advisal had
15 been given before any Miranda warning, the administrative advisal that counsel could be
16 present, but not at government expense, would conflict with the standard Miranda admonition
17 thereby creating confusion for the Defendant. As such, counsel argued, the rule of United States
18 v. San Juan-Cruz, 314 F.3d 384 (9th Cir. 2002) would come into play. (Holding that a Miranda
19 advisement of the right to appointed counsel must be clear and not subject to any equivocation
20 resulting from a prior or contemporaneous administrative advisal of the right to have an attorney
21 present, but not at government expense.)

22 Later, at the July 26, 2007 evidentiary hearing, Agent Salazar testified that following the
23 June 1 hearing he conducted further investigation into whether and when he provided any
24 administrative removal rights to either Defendant. In fact, Agent Salazar was able to retrieve an
25 I-826 form he utilized to advise each Defendant of his administrative rights. Agent Salazar
26 further testified that the times entered on each form (6 p.m. for Defendant Moytez-Pineda and 7

27
28 ⁴Although the testimony was unclear on the objects used to cover Defendants' heads during transportation, it seems clear that either a hood or an article of clothing was thus utilized for each Defendant in order to prevent their observations of the unmarked vehicles used in this case.

1 p.m. for Defendant Payan-Valenzuela) reflected the times the forms were input into a computer
2 and not when the administrative advisements were given. Agent Salazar then elaborated that it
3 had always been his practice, without exception, to issue administrative rights after Miranda
4 rights when the agent was aware, as in this case, that the case was being processed as a criminal
5 case. Defendant Moytez-Pineda testified briefly that the Form I-826 was shown to him by Agent
6 Salazar at approximately 6:00 to 6:30 p.m. and that he was later interviewed by DEA agents.
7 Defendant Moytez-Pineda was able to identify his signature on the I-826 form. On cross-
8 examination, Defendant Moytez-Pineda testified that he cannot read.

9 Agent Michael Ortiz of the Drug Enforcement Administration responded to the Calexico
10 Border Patrol station at approximately 8:15 p.m. on September 20, 2006. At approximately 8:50
11 p.m., the Miranda admonition was provided to Defendant Moytez-Pineda by DEA agent
12 Vasquez through the use of a standard "Miranda card". Defendant Moytez-Pineda acknowl-
13 edged his Miranda rights and then agreed to speak whereupon he gave a statement.⁵

14 Following the completion of Defendant Moytez-Pineda's interview, Agent Ortiz next
15 advised Defendant Payan-Valenzuela of his Miranda rights. Defendant Payan-Valenzuela
16 indicated he understood and waived his Miranda rights. He then provided a statement. The
17 interview of Defendant Payan-Valenzuela then began at approximately 9:30 p.m. and concluded
18 at approximately 10:00 p.m.

19 *Discussion*

20 The parties in this case fundamentally disagree on how the threshold analysis for these
21 motions to suppress evidence and statements should be structured. The government submits that
22 only reasonable suspicion was required for Defendants' vehicle to be stopped and further that the
23 use of a CTDD was justified under either a reasonable suspicion or probable cause standard.
24 Defendants contend, alternatively, that probable cause at the very least was required for the stop
25

26 ⁵Neither Defendant claims his Miranda advisement was in any way deficient or that any
27 statement was the product of coercive tactics at the time of the interviews. Rather, Defendants argue the
28 manner in which their vehicle was stopped tainted their later statements and that the rule of San Juan-
Cruz was violated.

Agent Ortiz testified that Defendants were calm during their respective interviews, were provided food and beverage as required and communicated appropriately.

1 and, moreover, given the use of the CTDD and drawn weapons, the more appropriate standard
2 should have been one of clear and convincing evidence that narcotics were being transported in
3 the vehicle.

4 Defendants further argue that the “field questions” asked of Defendants relating to
5 citizenship status were impermissible due to the asserted unconstitutional stop of the vehicle and
6 that later post-Miranda statements were tainted by the stop. The government responds that the
7 “field questions” were proper and that neither the stops nor the field questioning render the post-
8 Miranda statements inadmissible.

9 After careful consideration of all the evidence addressed regarding these motions as well
10 as the written submissions and oral arguments, this court finds that although only reasonable
11 suspicion was required for the stop of the vehicle in which Defendants were occupants, the stop
12 was justified under either a reasonable suspicion or probable cause standard.

13 The Fourth Amendment prohibits “unreasonable searches and seizures” by the govern-
14 ment and the reach of that protection extends to investigatory stops of people and vehicles that
15 fall short of arrests. United States v. Arvizu, 534 U.S. 266, 273 (2002). Reasonable suspicion
16 exists for an investigatory stop of a vehicle when the officer is aware of specific articulable facts
17 which, together with objective and reasonable inferences, form a basis for suspecting that the
18 person to be detained has committed or is about to commit a crime. See United States v. Cortez,
19 449 U.S. 411, 417-418 (1981); United States v. Salinas, 940 F.2d 392, 394 (9th Cir. 1991). Facts
20 are to be interpreted in light of the experience of a trained officer, and the entirety of relevant
21 circumstances must be considered. United States v. Sokolow, 490 U.S.1, 7-8 (1989).

22 The Supreme Court has established a non-exclusive list of factors upon which an officer
23 may rely in concluding reasonable suspicion exists: (1) characteristics of the area; (2) proximity
24 to the border; (3) usual patterns of traffic and time of day; (4) previous alien or drug smuggling
25 in the area; (5) behavior of the driver, including obvious attempts to evade officers; (6)
26 appearance or behavior of the passengers; (7) model and appearance of vehicle; and (8) officer
27 experience. United States v. Brignoni-Ponce, 422 U.S. 873, 885 (1975). However, the “totality
28 of the circumstances” of each case must be considered to determine whether the detaining officer

1 has a particularized and objective basis for suspecting illegal activity. United States v. Arvizu,
2 534 U.S. 266, 273-274 (2002).

3 Here, the factors supporting reasonable suspicion to stop and detain Defendants' vehicle
4 were numerous and compelling. The STAT unit conducting surveillance into the Buttercup area
5 on September 20, 2006 consisted of several highly experienced Border Patrol agents familiar
6 with smuggling activity in this area with close proximity to the border. These agents knew how
7 to conceal themselves and what signs to look for indicating smuggling activity. Before
8 September 20, 2006, the agents had become familiar with the looping maneuvers of scout
9 vehicles on Interstate 8 adjacent to Buttercup, as well as ATV riders riding scout in the dunes in
10 advance of a load vehicle emerging from Buttercup Valley into Buttercup campground. On
11 September 20, 2006, after approximately eight hours of continuous surveillance, the STAT team
12 detected suspicious scouting activity. Because no vehicular traffic had entered the Buttercup
13 area earlier, the agents quickly and justifiably concluded that Defendants' vehicle, a Honda
14 SUV, emerging from the dunes with blacked out windows, missing a front license plate as well
15 as the customary flag required of off-road vehicles, was in fact, a narcotics load vehicle which
16 had entered the United States by illegally crossing the border at the lower Buttercup area.

17 The scouting activity, the manner in which the Honda SUV was being operated, the
18 vehicle's appearance all fit the familiar and specific profile for drug smuggling. The determina-
19 tion of the agents was buttressed by their experience in which virtually every vehicle of the
20 many vehicles stopped under similar circumstances had been determined to be smuggling
21 narcotics. Reasonable suspicion abounded to strip the vehicle on Interstate 8 and detain
22 Defendants⁶.

23 Defendants urge the court to conclude that the use of the CTDD and drawn weapons in
24 this case was unreasonable and overly intrusive under the Fourth Amendment. Under the
25 circumstances presented, however, neither the use of the CTDD before agents activated their
26 emergency equipment, nor their use of firearms upon initial contact with Defendants constituted
27

28 ⁶Given the compelling factors supporting a determination that the vehicle was smuggling drugs,
the stop and detention would have been justified even under the higher standard of probable cause.

1 excessive force. The evidence before the court is that past use of this CTDD, or spike strip, had
2 resulted in the slow and controlled reduction of air from a tire, rather than tire blow-outs or
3 vehicle accidents. Moreover, the testimony of the agents supported the decision to wait until
4 Defendants' vehicle had passed certain escape points used by past load vehicles and was clear of
5 legitimate traffic. The tactical use of the CTDD allowed the agents to bring the vehicle to a point
6 of rest at an optimum location while reducing the potential for escape and risk to other traffic.
7 See United States v. Hernandez-Garcia, 284 F.3d 1135, 1140 (9th Cir. 2002). (Holding no basis
8 for invalidating an arrest or suppressing evidence where a CTDD was deployed under similar
9 circumstances).

10 Next, neither the use of drawn firearms in the approach of this vehicle, nor the initial use
11 of handcuffs converted the stop into a custodial arrest or Fourth Amendment violation. United
12 States v. Cervantes-Flores, 421 F.3d 825 (9th Cir. 2005) (Circumstances justified use of
13 handcuffs in a Terry stop without converting the contact into an arrest); United States v.
14 Merkley, 988 F.2d 1062, 1064 (10th Cir. 1993)(permitting the display of firearms and the use
15 handcuffs during a Terry stop when officers had reason to believe the suspect was dangerous).
16 Here, the high probability that Defendants were smuggling a load of narcotics into the United
17 States from Mexico justified the agents' decision to make a felony stop of the vehicle. The use of
18 drawn weapons and handcuffs enhanced the ability of the agents to quickly control the scene,
19 prevent escape, and retrieve risk of injury to the public as well as defendants.

20 Once Defendants were removed from the vehicle it became quickly apparent to the agents
21 from the strong odor of marijuana emanating from the vehicle and their observations of packages
22 in the rear seat area that Defendants were smuggling marijuana. The continued detention of
23 Defendants, as well as the roadside questioning of Defendants into their immigration status was
24 entirely justified. Berkemer v. McCarty, 468 U.S. 420, 435-40 (1984) (roadside questioning of a
25 motorist detained pursuant to a traffic stop does not constitute custodial interrogation for
26 Miranda purposes); United States v. Galindo-Gallegos, 244 F.3d 728, 730-732, (9th Cir.
27 2001)(border patrol agents' apprehension of Defendant and their questioning of his immigration
28 status was a proper Terry stop); United States v. Camargo, 177 F.3d. 1113, 1121-23 (9th Cir.

1 1999) (immigration questioning of detainee following vehicle stop did not amount to custodial
2 interrogation). Any statements made by Defendants regarding their immigration status were
3 properly obtained and admissible.

4 Next, Defendants urge this court to suppress later post-Miranda statements due to the
5 manner in which the vehicle stop was conducted, the fact that the heads of Defendants were
6 covered while they were transported to the Border Patrol station, and because Defendants were
7 allegedly advised of their administrative rights in a manner that may have undermined the
8 message of the Miranda advisement.

9 This court has already analyzed and approved the manner in which Defendant's vehicle
10 was stopped and Defendants were arrested. The use of hoods or articles of clothing to cover
11 Defendants' faces during transportation in order to protect the identity of the undercover
12 vehicles appeared justified under the circumstances. There is no evidence before the court that
13 this protective measure was pre-textual, coercive, or in any manner a factor in Defendants'
14 decisions to provide post-Miranda statements. The motion to suppress statements, insofar as it is
15 predicated upon the use of hoods or clothing to impair the vision of Defendants during
16 transportation, is denied.

17 Finally, we reach the issue of whether Defendants' post-Miranda statements should be
18 suppressed either because (1) the Miranda advisement was unclear due to the timing of the
19 administrative advisement, or (2) the statements were involuntary.

20 Defendants urge this court to find that they were each advised of their administrative
21 rights before their respective Miranda advisements or in such a way as to have created confusion
22 of the type criticized in U.S. v. San Juan-Cruz, 314 F.3d 384, 388-89 (9th Cir. 2002) (a Miranda
23 warning is defectively unclear when it is preceded by an advisal of administrative removal rights
24 wherein the individual is informed there is no right to government provided counsel). The
25 difficulty with Defendants' argument, however, is that it is dependent upon this court finding
26 that their Miranda warnings were conveyed in the manner condemned by San Juan-Cruz.
27 Although the initial testimony of Agent Salazar demonstrated his inability to recall whether he
28 utilized a certain form (I-826) in providing to Defendants their administrative removal advisal,


1 as well as other details, his subsequent investigation refreshed his memory on these points.
2 Agent Salazar was later able to provide copies of the I-826 forms he used to process Defendants
3 for administrative purposes and to testify as to his use of the forms. Agent Salazar was
4 vigorously cross-examined on the I-826 forms he utilized for Defendants as well as on his
5 refreshed memory that he provided administrative advisals *after* the post-Miranda interviews of
6 Defendants conducted by DEA agents. Agent Salazar testified that in order to specifically avoid
7 the prospect of an unclear Miranda warning (as discussed in San Juan-Cruz) it was his consistent
8 practice to defer the giving of an administrative removal admonition until after the Miranda
9 warnings and any interview into possible criminal wrongdoing. After Agent Salazar's testimony
10 regarding the I-826 forms (including his explanation of the 6:00 p.m. and 7:00 p.m. posted times
11 on the forms) and his custom and practice of deferring the administrative warning until after the
12 Miranda interview period, this court finds that the weight of the evidence establishes no San
13 Juan-Cruz error occurred⁷.

14 The preponderance of evidence before the court establishes that Defendants were each
15 properly advised of their Miranda rights and that each knowingly, voluntarily, and intelligently
16 waived those rights at the time they provided statements to DEA Agent Ortiz. Moreover, the
17 evidence establishes that each of the Defendants was interviewed by Agent Ortiz in a non-
18 coercive manner and environment.

19 For all of the foregoing reasons, the motions to suppress evidence and statements are
20 denied in their entirety as to each Defendant.

21 IT IS SO ORDERED.

22
23 DATED: September 14, 2007

24 
25 Hon. Jeffrey T. Miller
26 United States District Judge

27 ⁷Agent Salazar's testimony on this subject was more credible than that testimony of Defendant
28 Moytez-Pineda. Defendant Moytez-Pineda did not note the time he reviewed the I-826 Form with
Agent Salazar, and did not testify as to any confusion about his Miranda right to have government
counsel appointed for him.

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24 CTDD.

25 ²The Honda SUV traveled approximately 15 miles on Interstate 8 at the approximate speed of 60
26 mph before it was ultimately stopped.

27 ³Testimony from the several agents established that it was generally understood by all that it was
28 to be a felony stop, with weapons drawn and suspects handcuffed. This procedure had become the
standard method of apprehension of suspected load vehicles emerging from the Buttercup Valley area
under similar circumstances. Testimony of the agents was consistent in that in all such cases the vehicles
stopped were ultimately determined to be marijuana load vehicles.

1 Agent Salazar. As Defendant Moytez-Pineda stepped out of the vehicle, Agent Salazar observed
2 bundles behind the seat which he believed to contain marijuana. Agent Blake noticed a strong
3 odor of marijuana when the driver, Defendant Payan-Valenzuela, opened his door. Both
4 Defendants were placed on the ground and handcuffed. Each Defendant was questioned
5 regarding immigration status without being Mirandized and admitted, in essence, to being a
6 Mexican citizen with no authorization to be in the United States. Defendants were placed under
7 arrest and transported separately in unmarked vehicles to the Calexico-U.S. Border Patrol
8 station.⁴

9 *Advisal of Administrative and Miranda Rights*

10 At the June 1, 2007 evidentiary hearing, Agent Salazar testified he was unable to recall
11 whether he advised Defendants of their administrative removal rights (or whether he used Form
12 I-826 in connection therewith), although he did testify it was his custom and practice to do so
13 when encountering a deportable alien. The relevance of this line of questioning, vigorously
14 pursued by counsel for Defendant Moytez-Pineda, was that if such an administrative advisal had
15 been given before any Miranda warning, the administrative advisal that counsel could be
16 present, but not at government expense, would conflict with the standard Miranda admonition
17 thereby creating confusion for the Defendant. As such, counsel argued, the rule of United States
18 v. San Juan-Cruz, 314 F.3d 384 (9th Cir. 2002) would come into play. (Holding that a Miranda
19 advisement of the right to appointed counsel must be clear and not subject to any equivocation
20 resulting from a prior or contemporaneous administrative advisal of the right to have an attorney
21 present, but not at government expense.)

22 Later, at the July 26, 2007 evidentiary hearing, Agent Salazar testified that following the
23 June 1 hearing he conducted further investigation into whether and when he provided any
24 administrative removal rights to either Defendant. In fact, Agent Salazar was able to retrieve an
25 I-826 form he utilized to advise each Defendant of his administrative rights. Agent Salazar
26 further testified that the times entered on each form (6 p.m. for Defendant Moytez-Pineda and 7

27
28 ⁴Although the testimony was unclear on the objects used to cover Defendants' heads during transportation, it seems clear that either a hood or an article of clothing was thus utilized for each Defendant in order to prevent their observations of the unmarked vehicles used in this case.

1 p.m. for Defendant Payan-Valenzuela) reflected the times the forms were input into a computer
2 and not when the administrative advisements were given. Agent Salazar then elaborated that it
3 had always been his practice, without exception, to issue administrative rights after Miranda
4 rights when the agent was aware, as in this case, that the case was being processed as a criminal
5 case. Defendant Moytez-Pineda testified briefly that the Form I-826 was shown to him by Agent
6 Salazar at approximately 6:00 to 6:30 p.m. and that he was later interviewed by DEA agents.
7 Defendant Moytez-Pineda was able to identify his signature on the I-826 form. On cross-
8 examination, Defendant Moytez-Pineda testified that he cannot read.

9 Agent Michael Ortiz of the Drug Enforcement Administration responded to the Calexico
10 Border Patrol station at approximately 8:15 p.m. on September 20, 2006. At approximately 8:50
11 p.m., the Miranda admonition was provided to Defendant Moytez-Pineda by DEA agent
12 Vasquez through the use of a standard "Miranda card". Defendant Moytez-Pineda acknowl-
13 edged his Miranda rights and then agreed to speak whereupon he gave a statement.⁵

14 Following the completion of Defendant Moytez-Pineda's interview, Agent Ortiz next
15 advised Defendant Payan-Valenzuela of his Miranda rights. Defendant Payan-Valenzuela
16 indicated he understood and waived his Miranda rights. He then provided a statement. The
17 interview of Defendant Payan-Valenzuela then began at approximately 9:30 p.m. and concluded
18 at approximately 10:00 p.m.

19 *Discussion*

20 The parties in this case fundamentally disagree on how the threshold analysis for these
21 motions to suppress evidence and statements should be structured. The government submits that
22 only reasonable suspicion was required for Defendants' vehicle to be stopped and further that the
23 use of a CTDD was justified under either a reasonable suspicion or probable cause standard.
24 Defendants contend, alternatively, that probable cause at the very least was required for the stop
25

26 ⁵Neither Defendant claims his Miranda advisement was in any way deficient or that any
27 statement was the product of coercive tactics at the time of the interviews. Rather, Defendants argue the
28 manner in which their vehicle was stopped tainted their later statements and that the rule of San Juan-
Cruz was violated.

Agent Ortiz testified that Defendants were calm during their respective interviews, were provided food and beverage as required and communicated appropriately.

1 and, moreover, given the use of the CTDD and drawn weapons, the more appropriate standard
2 should have been one of clear and convincing evidence that narcotics were being transported in
3 the vehicle.

4 Defendants further argue that the “field questions” asked of Defendants relating to
5 citizenship status were impermissible due to the asserted unconstitutional stop of the vehicle and
6 that later post-Miranda statements were tainted by the stop. The government responds that the
7 “field questions” were proper and that neither the stops nor the field questioning render the post-
8 Miranda statements inadmissible.

9 After careful consideration of all the evidence addressed regarding these motions as well
10 as the written submissions and oral arguments, this court finds that although only reasonable
11 suspicion was required for the stop of the vehicle in which Defendants were occupants, the stop
12 was justified under either a reasonable suspicion or probable cause standard.

13 The Fourth Amendment prohibits “unreasonable searches and seizures” by the govern-
14 ment and the reach of that protection extends to investigatory stops of people and vehicles that
15 fall short of arrests. United States v. Arvizu, 534 U.S. 266, 273 (2002). Reasonable suspicion
16 exists for an investigatory stop of a vehicle when the officer is aware of specific articulable facts
17 which, together with objective and reasonable inferences, form a basis for suspecting that the
18 person to be detained has committed or is about to commit a crime. See United States v. Cortez,
19 449 U.S. 411, 417-418 (1981); United States v. Salinas, 940 F.2d 392, 394 (9th Cir. 1991). Facts
20 are to be interpreted in light of the experience of a trained officer, and the entirety of relevant
21 circumstances must be considered. United States v. Sokolow, 490 U.S.1, 7-8 (1989).

22 The Supreme Court has established a non-exclusive list of factors upon which an officer
23 may rely in concluding reasonable suspicion exists: (1) characteristics of the area; (2) proximity
24 to the border; (3) usual patterns of traffic and time of day; (4) previous alien or drug smuggling
25 in the area; (5) behavior of the driver, including obvious attempts to evade officers; (6)
26 appearance or behavior of the passengers; (7) model and appearance of vehicle; and (8) officer
27 experience. United States v. Brignoni-Ponce, 422 U.S. 873, 885 (1975). However, the “totality
28 of the circumstances” of each case must be considered to determine whether the detaining officer

1 has a particularized and objective basis for suspecting illegal activity. United States v. Arvizu,
2 534 U.S. 266, 273-274 (2002).

3 Here, the factors supporting reasonable suspicion to stop and detain Defendants' vehicle
4 were numerous and compelling. The STAT unit conducting surveillance into the Buttercup area
5 on September 20, 2006 consisted of several highly experienced Border Patrol agents familiar
6 with smuggling activity in this area with close proximity to the border. These agents knew how
7 to conceal themselves and what signs to look for indicating smuggling activity. Before
8 September 20, 2006, the agents had become familiar with the looping maneuvers of scout
9 vehicles on Interstate 8 adjacent to Buttercup, as well as ATV riders riding scout in the dunes in
10 advance of a load vehicle emerging from Buttercup Valley into Buttercup campground. On
11 September 20, 2006, after approximately eight hours of continuous surveillance, the STAT team
12 detected suspicious scouting activity. Because no vehicular traffic had entered the Buttercup
13 area earlier, the agents quickly and justifiably concluded that Defendants' vehicle, a Honda
14 SUV, emerging from the dunes with blacked out windows, missing a front license plate as well
15 as the customary flag required of off-road vehicles, was in fact, a narcotics load vehicle which
16 had entered the United States by illegally crossing the border at the lower Buttercup area.

17 The scouting activity, the manner in which the Honda SUV was being operated, the
18 vehicle's appearance all fit the familiar and specific profile for drug smuggling. The determina-
19 tion of the agents was buttressed by their experience in which virtually every vehicle of the
20 many vehicles stopped under similar circumstances had been determined to be smuggling
21 narcotics. Reasonable suspicion abounded to strip the vehicle on Interstate 8 and detain
22 Defendants⁶.

23 Defendants urge the court to conclude that the use of the CTDD and drawn weapons in
24 this case was unreasonable and overly intrusive under the Fourth Amendment. Under the
25 circumstances presented, however, neither the use of the CTDD before agents activated their
26 emergency equipment, nor their use of firearms upon initial contact with Defendants constituted
27

28 ⁶Given the compelling factors supporting a determination that the vehicle was smuggling drugs,
the stop and detention would have been justified even under the higher standard of probable cause.

1 excessive force. The evidence before the court is that past use of this CTDD, or spike strip, had
2 resulted in the slow and controlled reduction of air from a tire, rather than tire blow-outs or
3 vehicle accidents. Moreover, the testimony of the agents supported the decision to wait until
4 Defendants' vehicle had passed certain escape points used by past load vehicles and was clear of
5 legitimate traffic. The tactical use of the CTDD allowed the agents to bring the vehicle to a point
6 of rest at an optimum location while reducing the potential for escape and risk to other traffic.
7 See United States v. Hernandez-Garcia, 284 F.3d 1135, 1140 (9th Cir. 2002). (Holding no basis
8 for invalidating an arrest or suppressing evidence where a CTDD was deployed under similar
9 circumstances).

10 Next, neither the use of drawn firearms in the approach of this vehicle, nor the initial use
11 of handcuffs converted the stop into a custodial arrest or Fourth Amendment violation. United
12 States v. Cervantes-Flores, 421 F.3d 825 (9th Cir. 2005) (Circumstances justified use of
13 handcuffs in a Terry stop without converting the contact into an arrest); United States v.
14 Merkley, 988 F.2d 1062, 1064 (10th Cir. 1993)(permitting the display of firearms and the use
15 handcuffs during a Terry stop when officers had reason to believe the suspect was dangerous).
16 Here, the high probability that Defendants were smuggling a load of narcotics into the United
17 States from Mexico justified the agents' decision to make a felony stop of the vehicle. The use of
18 drawn weapons and handcuffs enhanced the ability of the agents to quickly control the scene,
19 prevent escape, and retrieve risk of injury to the public as well as defendants.

20 Once Defendants were removed from the vehicle it became quickly apparent to the agents
21 from the strong odor of marijuana emanating from the vehicle and their observations of packages
22 in the rear seat area that Defendants were smuggling marijuana. The continued detention of
23 Defendants, as well as the roadside questioning of Defendants into their immigration status was
24 entirely justified. Berkemer v. McCarty, 468 U.S. 420, 435-40 (1984) (roadside questioning of a
25 motorist detained pursuant to a traffic stop does not constitute custodial interrogation for
26 Miranda purposes); United States v. Galindo-Gallegos, 244 F.3d 728, 730-732, (9th Cir.
27 2001)(border patrol agents' apprehension of Defendant and their questioning of his immigration
28 status was a proper Terry stop); United States v. Camargo, 177 F.3d. 1113, 1121-23 (9th Cir.

1 1999) (immigration questioning of detainee following vehicle stop did not amount to custodial
2 interrogation). Any statements made by Defendants regarding their immigration status were
3 properly obtained and admissible.

4 Next, Defendants urge this court to suppress later post-Miranda statements due to the
5 manner in which the vehicle stop was conducted, the fact that the heads of Defendants were
6 covered while they were transported to the Border Patrol station, and because Defendants were
7 allegedly advised of their administrative rights in a manner that may have undermined the
8 message of the Miranda advisement.

9 This court has already analyzed and approved the manner in which Defendant's vehicle
10 was stopped and Defendants were arrested. The use of hoods or articles of clothing to cover
11 Defendants' faces during transportation in order to protect the identity of the undercover
12 vehicles appeared justified under the circumstances. There is no evidence before the court that
13 this protective measure was pre-textual, coercive, or in any manner a factor in Defendants'
14 decisions to provide post-Miranda statements. The motion to suppress statements, insofar as it is
15 predicated upon the use of hoods or clothing to impair the vision of Defendants during
16 transportation, is denied.

17 Finally, we reach the issue of whether Defendants' post-Miranda statements should be
18 suppressed either because (1) the Miranda advisement was unclear due to the timing of the
19 administrative advisement, or (2) the statements were involuntary.

20 Defendants urge this court to find that they were each advised of their administrative
21 rights before their respective Miranda advisements or in such a way as to have created confusion
22 of the type criticized in U.S. v. San Juan-Cruz, 314 F.3d 384, 388-89 (9th Cir. 2002) (a Miranda
23 warning is defectively unclear when it is preceded by an advisal of administrative removal rights
24 wherein the individual is informed there is no right to government provided counsel). The
25 difficulty with Defendants' argument, however, is that it is dependent upon this court finding
26 that their Miranda warnings were conveyed in the manner condemned by San Juan-Cruz.
27 Although the initial testimony of Agent Salazar demonstrated his inability to recall whether he
28 utilized a certain form (I-826) in providing to Defendants their administrative removal advisal,


1 as well as other details, his subsequent investigation refreshed his memory on these points.
2 Agent Salazar was later able to provide copies of the I-826 forms he used to process Defendants
3 for administrative purposes and to testify as to his use of the forms. Agent Salazar was
4 vigorously cross-examined on the I-826 forms he utilized for Defendants as well as on his
5 refreshed memory that he provided administrative advisals *after* the post-Miranda interviews of
6 Defendants conducted by DEA agents. Agent Salazar testified that in order to specifically avoid
7 the prospect of an unclear Miranda warning (as discussed in San Juan-Cruz) it was his consistent
8 practice to defer the giving of an administrative removal admonition until after the Miranda
9 warnings and any interview into possible criminal wrongdoing. After Agent Salazar's testimony
10 regarding the I-826 forms (including his explanation of the 6:00 p.m. and 7:00 p.m. posted times
11 on the forms) and his custom and practice of deferring the administrative warning until after the
12 Miranda interview period, this court finds that the weight of the evidence establishes no San
13 Juan-Cruz error occurred⁷.

14 The preponderance of evidence before the court establishes that Defendants were each
15 properly advised of their Miranda rights and that each knowingly, voluntarily, and intelligently
16 waived those rights at the time they provided statements to DEA Agent Ortiz. Moreover, the
17 evidence establishes that each of the Defendants was interviewed by Agent Ortiz in a non-
18 coercive manner and environment.

19 For all of the foregoing reasons, the motions to suppress evidence and statements are
20 denied in their entirety as to each Defendant.

21 IT IS SO ORDERED.

22
23 DATED: September 14, 2007

24 
25 Hon. Jeffrey T. Miller
26 United States District Judge

27 ⁷Agent Salazar's testimony on this subject was more credible than that testimony of Defendant
28 Moytez-Pineda. Defendant Moytez-Pineda did not note the time he reviewed the I-826 Form with
Agent Salazar, and did not testify as to any confusion about his Miranda right to have government
counsel appointed for him.

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